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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KEVIN MCCARTHY

Appeal 2010-010569
Application 10/084,982
Technology Center 3600

Before: JOSEPH A. FISCHETTI, BIBHU R. MOHANTY, and MICHAEL W. KIM, *Administrative Patent Judges.*

KIM, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

This is an appeal from the final rejection of claims 1-24. We have jurisdiction to review the case under 35 U.S.C. §§ 134 and 6 (2002).

The claimed invention is directed to handling payment of downloadable content from a content provider to a wireless terminal via a communication network. (Spec. 1:5-7). Claim 1, reproduced below, is further illustrative of the claimed subject matter.

1. A method comprising:
 - opening a software application in a wireless terminal,
 - requesting downloadable content from the open software application,
 - automatically starting up a network session,
 - transmitting in said network session a request for downloading said downloadable content for the software application,
 - downloading said downloadable content,
 - enabling a user of the wireless terminal to pre-study said downloaded content;
 - effecting payment for the pre-studied downloaded content for the software application for enabling storing of the pre-studied downloaded content for the software application without further user interaction beyond selecting the pre-studied downloaded content for storage, wherein effecting the payment is enabled subsequent to an account verification conducted relative to the user prior to the downloading of said downloaded content, and
 - storing of the pre-studied downloaded content for the software application from which the downloaded content for the software application was requested in response to effecting of the payment.

Claims 1-24 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Wiser (US Pat. 6,868,403 B1, iss. Mar. 15, 2005) in view of Sasaki (US Pub. 2002/0077988 A1, pub. Jun. 20, 2002).

We AFFIRM.

ANALYSIS

We are not persuaded the Examiner erred in asserting that a combination of Wiser and Sasaki renders obvious

downloading said downloadable content,
enabling a user of the wireless terminal to pre-study said downloaded content;

effecting payment for the pre-studied downloaded content for the software application for enabling storing of the pre-studied downloaded content for the software application without further user interaction beyond selecting the pre-studied downloaded content for storage,

as recited in independent claim 1¹ (App. Br. 6-11). Appellant asserts that independent claim 1 recites downloading, pre-studying, and storing the same downloaded content. Appellant then asserts that because the un-encrypted version of the entire song disclosed in column 3, lines 57-65 of Wiser is of a “lesser quality, such as increased compression and/or lower sample rate” as compared to the encrypted version of the same that is later purchased, the un-encrypted version cannot correspond to the recited downloaded content (App. Br. 7-9). However, column 3, lines 53-56 of Wiser discloses that the encrypted and un-encrypted versions of the song are combined into the same media data file. Accordingly, as the entire file is downloaded, the un-encrypted version is “previewed” from the downloaded file, and the encrypted version is later “unlocked” from this same downloaded file, the media data file of Wiser does correspond to the recited downloaded content.

¹ As Appellant asserts that independent claims 10 and 18 include similar language, we treat claim 1 as representative (App. Br. 7).

Moreover, the Examiner additionally cites paragraph [0033] of Sasaki as disclosing that “[u]nlicensed users 26, on the other hand, may only playback the digital content a limited number of times, after which they may only play preview sample clips of the unlicensed digital work” (Exam'r's Ans. 10-11). In this case, the “preview sample clips” are played from the same digital content that will be “unlocked” when unlicensed user 26 becomes licensed user 28.

Appellant further asserts that Sasaki teaches away from the claimed invention, because “[e]nabling such unauthorized copying by a user [as disclosed in Sasaki] who has not paid for the privilege is directly contrary to the teachings of the instant claims enabling downloading and pre-study, but only enabling saving of the content responsive to purchasing the content” (App. Br. 9-10). However, Sasaki does not discourage any mechanism for preventing the storage and/or unauthorized distribution of content, as required for a teaching away. *See In re Gurley*, 27 F.3d 551, 553 (Fed. Cir. 1994) (“[a] reference may be said to teach away when a person of ordinary skill, upon [examining] the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant”). Indeed, Sasaki itself is also directed to mechanisms for controlling digital content similar to the claimed invention, as evidenced by the difference in rights afforded to users 26, 28. Moreover, Wiser is cited for the mechanisms of actual delivering the media data file (Exam'r's Ans. 3-5). *See In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986) (the argument that a single reference alone does not disclose the recited claimed steps is not persuasive because nonobviousness cannot be established by attacking the references individually when the

rejection is predicated upon a combination of prior art disclosures); *In re Keller*, 642 F.2d 413, 426 (CCPA 1981) (“one cannot show non-obviousness by attacking references individually where, as here, the rejections are based on combinations of references”).

Appellant additionally asserts that because Sasaki requires meta-data and Wiser does not, one of ordinary skill would have been discouraged in combining Sasaki and Wiser (App. Br. 10). We disagree. Wiser discloses the media data file includes descriptive text, artwork, and other information (col. 3, ll. 53-56). Either the descriptive text and artwork constitute meta-data, or the other information can include meta-data. Thus, the system of Wiser is compatible with content containing meta-data.

Appellant asserts that “*Wiser et al.* does not confirm account status until after preview content is requested and delivered (See, e.g., Figs 8 and 9a). *Sasaki et al.* is completely devoid of any such feature” (App. Br. 10-11). We adopt the Examiner’s findings of fact and reasoning concerning this argument, as set forth on page 14 of the Examiner Answer.

DECISION

The decision of the Examiner to reject claims 1-24 is AFFIRMED.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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Application 10/084,982

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